UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASCENSION HEALTH,

Plaintiff,

-against-

AMERICAN INTERNATIONAL GROUP, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., and ACE AMERICAN INSURANCE COMPANY,

Defendants.

Declaration of James Weller in Support of Motion to Dismiss

08-CV-7765 (PGG) (MHD)

JAMES W. WELLER, an attorney duly admitted to practice before this Court and the Courts of the State of New York, declares the following under penalty of perjury:

1. I am duly admitted to practice law before the United States District Court for the Southern District of New York. I am a Partner with the law firm of Nixon Peabody LLP, counsel for American International Group, Inc. ("AIG") with respect to this action. As such, I am fully familiar with the facts of this matter set forth herein based on my review of the file and handing of this case.

2. I submit this Declaration in support of AIG's motion to dismiss the claims against AIG.

3. Plaintiff Ascension Health ("Ascension") commenced this coverage action by filing a complaint on September 4, 2008, and prior to defendants' answer, filed an amended complaint on March 13, 2009 naming AIG, National Union, and ACE as defendants (the "Complaint"). A copy of the Complaint is attached as **Exhibit 1**.

4. Plaintiff seeks a declaration that the defendants are obligated to provide insurance coverage to Ascension for three underlying class action law suits venued in New York, Michigan and Arizona under several contracts of insurance between Ascension and National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") and between Ascension and ACE American Insurance Company ("ACE"). The class actions are entitled: *Jane Doe, et al. v. Arizona Hospital and Healthcare Assoc. et al.*, Case No. 07-cv-1292 (D. Ariz.) (the "current Arizona Action"), *Fleischman, et al. v. Albany Medical Center, et al.*, Case No. 06-cv-0765 (N.D.N.Y.) ("the New York Action") and *Cason-Merenda, et al. v. Detroit Medical Center, et al.*, Case No. 06-cv-15601 (E.D. Mich.) (the "Michigan Action").

5. As set forth in the Complaint, National Union provided directors and officers insurance to Plaintiff Ascension Health during a time period pertinent to this action. Pursuant to the terms and conditions of the insurance contracts, National Union entered into a Directors, Officers and Trustees Insurance and Not-For-Profit-Organizations Reimbursement Policy with Ascension, bearing policy number 528-65-10, with a policy period of November 15, 2004 to November 15, 2005 and a $25 million limit of liability subject to certain sublimits and retentions (the "04/05 Policy"). National Union then entered into another insurance contract that was a renewal of the 04/05 Policy, bearing policy number 494-76-96, with a policy period of November 15, 2005 to November 15, 2006 (the "05/06 Policy"). National Union did not renew the 05/06 Policy, but instead entered into a replacement, excess, follow-form insurance contract, bearing policy number 965-53-81, with policy period November 15, 2006 to November 15, 2007, with a $15 million limit of liability in excess of $15 million of underlying primary insurance between ACE and Ascension (the "Excess Policy") (the 04/05, 05/06 and Excess Policies are collectively referred to as the "National Union insurance contracts").

6. National Union has accepted coverage for these underlying class actions under the 04/05 Policy but denied coverage under the 05/06 Policy and the Excess Policy. *See* Complaint, **Exhibit 1,** at ¶¶ 15-16.

7. National Union has admitted in its Answer that it issued the three National Union insurance contracts to Ascension. A copy of National Union's Answer is attached as **Exhibit 2**.

8. Plaintiffs have improperly named AIG as a defendant. AIG did not issue any of the insurance contracts at issue and thus is not in privity of contract with plaintiffs. Copies of the contracts are annexed as Exhibits D, E and F to the Complaint. *See* **Exhibit 1**. Plaintiffs have not made any separate allegations against AIG in this action, simply referring to AIG collectively with National Union.

9. As shown in the public profiles of AIG and National Union, the two entities legally maintain separate and distinct identities. *See* attached as **Exhibit 3**, *Company Profile: American International Group*, GOLIATH, Mar. 16, 2009, *available at* http://goliath.ecnext.com/coms2/product-compint-0000300381-page.html; *Company Profile: National Union Fire Insurance Company of Pittsburgh, Pennsylvania*, GOLIATH, Apr. 25, 2008, *available at* http://goliath.ecnext.com/coms2/product-compint-0000224422-page.html. National Union and AIG are organized under laws of different states and thus regulated by different states' insurance regulators.

10. Plaintiffs served AIG and National Union with the original complaint at their respective, separate places of business. *See* Affidavits of Service, attached as **Exhibit 4**. AIG and National Union agreed to accept service of Ascension's amended complaint through its attorney.

WHEREFORE, AIG respectfully requests that this Court dismiss the claims against it pursuant to Rule 12 of the Federal Rules of Civil Procedure, and grant such other relief that the Court deems just and proper.

Dated: Jericho, New York
April 17, 2009

Respectfully submitted,

NIXON PEABODY LLP

By: /s/ James Weller

James Weller (JWW 0545)
50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Tel.: (516) 832-7500
Fax: (516) 832-7555